

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DENIS KAVANAGH)	
Claimant)	
VS.)	
)	Docket No. 234,994
U.S.D. NO. 250)	
Respondent)	
AND)	
)	
KANSAS ASSOCIATION OF SCHOOL BOARDS)	
Insurance Carrier)	

ORDER

Claimant appealed the February 17, 1999 preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

This is a claim for a January or February 1998 accident and alleged injuries to both hands and the right hip. The Judge denied claimant's request for medical treatment to the right wrist after finding that claimant failed to prove the relationship between the right wrist fracture and the alleged accident.

Claimant argues the Judge erred and contends that he proved the relationship between the wrist fracture and a fall at work. Conversely, respondent and its insurance carrier contend (1) the Appeals Board lacks jurisdiction to review this preliminary hearing Order, (2) the Board should decline to exercise its jurisdiction until the record is supplemented with expert medical testimony regarding causation, and (3) the Order should be affirmed as claimant has failed to prove the alleged January or February 1998 accident caused the right wrist fracture that was first diagnosed in November 1998.

The only issues before the Board on this appeal are:

1. Does the Appeals Board have the jurisdiction to review a preliminary hearing finding that a worker's injury is not related to an alleged accident?
2. If so, is claimant's right wrist injury and present need for medical treatment related to the alleged January or February 1998 accident?

FINDINGS OF FACT

After considering the record compiled to date, the Board finds:

1. Mr. Kavanagh alleges he injured both wrists and right hip in either January or February 1998, when a fellow teacher ran into him during gym class. At the time of the alleged accident, Mr. Kavanagh was employed as a substitute school teacher by U.S.D. No. 250.
2. For preliminary hearing purposes, the Board finds that Mr. Kavanagh was knocked down in either January or February 1998 during gym class. Mr. Kavanagh's testimony about colliding with a fellow teacher is uncontroverted. Also, in medical reports dated February 1998 prepared by John M. Veitch, M.D., the doctor notes that Mr. Kavanagh recently fell at work.
3. In approximately April 1998, Mr. Kavanagh fell from his bicycle injuring both hands. Dr. Veitch's letter to the school district dated April 24, 1998, contains that information.
4. The Judge requested Mr. Kavanagh to undergo an independent medical evaluation. The x-rays taken for that evaluation, which was conducted in November 1998, established that Mr. Kavanagh has a scaphoid fracture in the right wrist that should be treated.
5. The Judge found that Mr. Kavanagh failed to prove that he injured the right wrist at work. Based upon this record, the Appeals Board agrees. Although at the time of the accident Mr. Kavanagh was seeing Dr. Veitch for his left wrist, the doctor's records do not indicate that Mr. Kavanagh made any complaints regarding his right hand or wrist until he fell from his bicycle in April 1998. Also, Ms. Pat Torbett, the school board's clerk, testified and denied that Mr. Kavanagh told her he had injured his right wrist in a work-related accident. Finally, Zenta Shelton, the claims representative who in early 1998 was working with Mr. Kavanagh regarding a claim for a left wrist injury, testified that Mr. Kavanagh did not tell her about injuring his right wrist until July 1998 when they were discussing settlement of the left wrist claim.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.
2. The Appeals Board has the jurisdiction to review a preliminary hearing finding of whether an injury was caused or is related to an alleged accident.¹
3. Mr. Kavanagh has failed to prove that his right wrist was injured in the January or February 1998 accident. Therefore, the request for preliminary hearing benefits should be denied.

WHEREFORE, the Appeals Board affirms the February 17, 1999 preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

c: John I. O'Connor, Pittsburg, KS
Frederick J. Greenbaum, Kansas City, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director

¹ See K.S.A. 1998 Supp. 44-534a.